

## **OVERTIME, COMPENSATORY TIME, TRAINING, AND TRAVEL UNDER THE FAIR LABOR STANDARDS ACT (FLSA)**

### **1. PURPOSE**

This guidance is provided as general information for human resources personnel, managers, and supervisors regarding overtime (OT), compensatory time, training, and travel under the FLSA.

### **2. GENERAL INFORMATION**

a. The recent Army-wide review of the FLSA exemption status of all GS-7 through GS-12 positions will result in more USACE employees being covered by the FLSA. Therefore, it is important for USACE managers and supervisors to have a better understanding of governing overtime (OT) requirements.

b. Civilian employees can be required to work OT whether they desire to or not. However, management must use common sense, follow labor agreements and regulatory requirements, and use volunteers if qualified and available. Nonetheless, if the need arises, management has the authority to direct employees to work OT.

c. The Fair Labor Standards Act of 1938, as amended (referred to as "the Act" or "FLSA"), is published in law in sections 201-219 of title 29, United States Code (USC). The Act provides for minimum standards for both wages and overtime entitlement and spells out administrative procedures by which covered worktime must be compensated. The Act began applying to federal government employees in 1974. The Office of Personnel Management's (OPM) FLSA regulations are published in part 551 of title 5, Code of Federal Regulations (CFR).

d. Employees covered by the FLSA are called nonexempt employees. Employees covered by title 5 are called exempt employees because they are exempt from coverage of the FLSA. The duties of their positions, rather than pay or grade, determine whether employees are exempt or nonexempt. If they meet the executive, administrative, or professional exemption they are exempt from the FLSA and are covered by title 5. Supervisors can determine if employees are exempt or nonexempt by checking employees' job descriptions or SF-50s (notification of personnel action).

### **3. OVERTIME**

a. Under both title 5 and FLSA, except when on a compressed alternative work schedule, employees receive OT compensation for work that exceeds 8 hours in a day or 40 hours in a week. If on a compressed schedule, any hours that exceed the scheduled hours are OT (e.g., the 11th hour if an employee is working a 4-day/10-hour workweek).

b. There are two types of OT. One is *regularly scheduled OT, which is part of the regularly scheduled administrative workweek*. Employees must receive OT pay for scheduled

OT. The other is irregular and occasional OT, which is not *part of the regularly scheduled* administrative workweek. Employees may be compensated for irregular and occasional OT with either OT pay or compensatory time off.

c. Overtime compensation is normally paid in 15-minute or 1-hour increments. Under both title 5 and the FLSA, OT compensation is payable at one and one-half times the employee's hourly *rate of basic* pay. The maximum payable under title 5 is one and one-half times the GS-10, Step 1 rate. Nonexempt employees receive time and one-half regardless of grade or pay level.

d. Under title 5, except in an emergency situation, OT must be specifically ordered and approved by someone with the authority to do so. While overtime may also be ordered and approved under the FLSA, it also has the concept of "suffer and permit". Under this concept, nonexempt employees who perform OT work outside regular working hours (before work, during lunch, after work, or on weekends) for the benefit of the agency, even if not directed or requested to do so, are entitled to compensation if management knew (or had reason to believe) that the work was being performed and did not try to stop it.

e. Under both title 5 and the FLSA any employee called back to work must receive a minimum of two hours overtime compensation, even if they do not work the full two hours.

#### **4. COMPENSATORY TIME**

a. Compensatory time off is considered a form of compensation just like OT pay and is payable on an hour for hour basis. Compensatory time may only be granted for irregular or occasional OT required by management, not for scheduled OT, unless the employee is working a flexible work schedule. Under the FLSA, nonexempt employees (both GS and WG) at any pay or grade level may not be required to take compensatory time. They may, at their option, request compensatory time instead of OT pay. Under title 5, employees who earn less than GS-10/10 are entitled to OT pay, but may elect instead to take compensatory time. Employees who earn more than GS-10/10 may be required to take compensatory time instead of receiving OT pay.

b. Compensatory time should be formally documented on time cards and scheduled for use within 26 pay periods. Generally, if not used within 26 pay periods the employees will be paid OT compensation for the time worked. It is also paid when the employee leaves the agency.

#### **5. OVERTIME FOR TRAINING**

a. The Government Employees Training Act, incorporated into title 5, generally prohibits the payment of premium pay to employees for time spent in training. The OPM has established some exceptions (see 5 CFR 410.402), but they are few (e.g., results in cost savings or training that can only be accomplished at night).

b. There are additional situations under the FLSA where OT for training is appropriate. Training outside regular working hours shall be considered hours of work if (1) the employee is directed to participate in the training by his or her employing agency, and (2) the purpose of the

training is to improve the employee's performance of the duties and responsibilities of his or her current position.

## 6. OVERTIME FOR TRAVEL

a. Overtime pay for travel is an area where there is also much confusion and misunderstanding. Many employees think that they are automatically entitled to OT when they have to travel on their own time (Saturdays, Sundays, holidays, evenings, or off days) for TDY or training. Determining an employee's OT entitlement while in a travel status varies depending on whether or not the employee is covered by the overtime provisions of the FLSA.

b. *Exempt employees (5 USC Section 5542 and 5 CFR Section 550-112).* The time spent in a travel status away from the official duty station of an employee is **not** hours of employment **unless**:

- 1) The time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime work; or
- 2) The travel (1) involves the performance of work while traveling, (2) is incident to travel that involves the performance of work while traveling, (3) is carried out under arduous conditions, or (4) results from an event which could not be scheduled or controlled administratively.

c. *Nonexempt employees (Fair Labor Standards Act and 5 CFR Section 551.422):* The time spent traveling shall be considered hours of work if:

- 1) An employee is required to travel during regular working hours;
- 2) An employee is required to drive a vehicle or perform other work while traveling;
- 3) An employee is required to travel as a passenger on a one-day assignment away from the official duty stations; or
- 4) An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on nonworkdays that correspond to the employee's regular working hours;
- 5) An employee who travels from home before the regular workday begins and returns from home at the end of the workday is engaged in normal "home to work" travel; such travel is **not** hours of work. When an employee travels directly from home to a temporary duty location outside the limits of his or her official duty station, the time the employee would have spent in normal home to work travel shall be deducted from hours of work as specified in paragraphs 2) and 3), above.
- 6) An employee who is offered one mode of transportation, and who is permitted to use an alternative mode of transportation, or an employee who travels at a time other than that selected by the agency, shall be credited with the lesser of:
  - The actual travel time that is hours of work under this section; or
  - The estimated travel time which would have been considered hours of work under this section had the employee used the mode of transportation offered by the agency, or traveled at the time selected by the agency.

c. Additional guidance on FLSA determination, overtime, compensatory time, and overtime for training and travel may be obtained from the following web sites:

<http://www.opm.gov/FLSA/index.htm>

<http://www.opm.gov/oca/pay/index.htm>

[http://www.cpms.osd.mil/fas/pay/pay\\_ref.htm](http://www.cpms.osd.mil/fas/pay/pay_ref.htm)

<http://www.cpol.army.mil> Click on PERMISS, then click on Classification.

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